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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 MAR 14 PM 2:46

JEANNE HICKS, CLERK

BY: Ivy Rios ✓

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

V1300CR201080049

Plaintiff,

STATE'S MEMORANDUM RE: AUDIO CLIPS

vs.

(The Honorable Warren Darrow)

JAMES ARTHUR RAY,

Defendant.

The State of Arizona, through undersigned counsel, hereby files this Memorandum Re:
Audio Clips with the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background

This case is a triple homicide with over fifty people present with the three victims in Defendant's super-heated environment. The case is expected to take four months to litigate; the parties have marked over 700 items as exhibits. Exhibits include photographs, medical records, expert reports, transcripts, waivers, client packets, and audio recordings. The events of the week leading to the deaths are extremely relevant to the conduct and state of mind of participants in Defendant's sweat lodge. Defendant's specific words to participants throughout the week, recorded at his direction, are the best evidence of what he said.

On January 13, 2011, this Court granted the State's Motion to Compel the audio recordings made of Defendant's Spiritual Warrior 2009 seminar. All participants at the seminar

1 were required to sign a Publicity Waiver; indeed, for those participants who have testified during
2 this trial, that Wavier has been admitted into evidence. (See Exhibits 170, 190, 195, 201, 224, and
3 227). Defendant has been in possession of the audio recording since October 2009. Defendant
4 provided the audio of Spiritual Warrior 2009 to the State, pursuant to the Court's order, on
5 January 31, 2011.
6

7 That same day, January 31, 2011, the State provided notice to Defendant of its intent to
8 use the entire audio recording at trial. *See State's 34th Supplemental Disclosure*. Also on January
9 31, 2011, the State filed its List of Witnesses and Exhibits, listing the audio recording of the
10 Spiritual Warrior 2009 event. The complete audio recording was submitted with the State's
11 exhibits and marked by the clerk as Exhibits 158, 159, 160 and 161(Sunday, October 4, 2009,
12 Monday, October 5, 2009, Tuesday, October 7, 2009, and Thursday, October 8, 2009).
13 Additionally, on February 14, 2011, the State provided Defendant with a transcript of the audio of
14 October 8, 2009, the only transcript of the audio in the State's possession.
15

16 In spite of the fact that Defendant has four attorneys working on this case for the last
17 sixteen months, and Defendant has had the Spiritual Warrior 2009 audio in his possession for that
18 entire time, Defendant has objected that the audio is too voluminous to review. The State, who
19 has had possession of the audio only since January 31, 2011, less than two months, has
20 accordingly prepared and provided to Defendant specific excerpts for trial. The CD with the
21 excerpts identifies the date and time of each audio excerpt and is easily played. The State would
22 note Defendant appears to have a transcript of the entire audio recordings; a transcript of the
23 audio from Sunday, October 4, 2009, was used by defense counsel in cross-examination of
24 witness Dennis Mehravar, but not provided to the State.
25

26 In response to receiving the CD with specific audio excerpts, Defendant has alternatively

1 complained the excerpts are taken out of context or there are too many excerpts to review. The
2 State has identified for Defendant 22 audio clips it intends to introduce into evidence, in addition
3 to those audio clips already admitted. The State has asked Defendant to prepare CDs with
4 additional context if Defendant believes context is needed pursuant to Rule 106, Arizona Rules of
5 Evidence.

6
7 **B. Rule 106, Arizona Rules of Evidence**

8 To address Defendant's concern that excerpts are taken out of context, the State has
9 repeatedly indicated its agreement to admit into evidence the entire audio. The State has also
10 invited Defendant to notify the State, in advance, of the specific excerpts he believes are taken out
11 of context and to provide to the State the context Defendant believes should be played for the
12 jury.

13
14 **C. Defendant's objections to the Spiritual Warrior 2009 audio are without merit.**

- 15 1. Defendant's statements are not hearsay and are the best evidence of his words. *See*
16 *Rule 801(d)(2)(A), Arizona Rules of Evidence*. Just as a witness can testify to a
17 defendant's words, so can audio excerpts of his words be played.
- 18 2. The State has provided timely notice to Defendant of the intent to use the audio
19 recording at trial. Mere volume of evidence does not create a disclosure violation.
- 20 3. Defendant's objections that use of the audio at trial is unconstitutional were
21 thoroughly briefed in the State's Motion to Compel, Defendant's Response, and the
22 State's Reply; and ruled on by this Court.
- 23 4. The use of audio clips at trial is comparable to the use of photographs - snapshots in
24 time that are admissible provided the foundation is laid by the witness and the
25 information is relevant. What Defendant told participants throughout the week of the
26

1 Spiritual Warrior 2009 event, and how it affected participant's mindset in Defendant's
2 sweat lodge, is clearly relevant to the charges of reckless manslaughter. Indeed,
3 Defendant stated in his opening that participants had choices throughout the week
4 whether to participate in the various activities and the sweat lodge, and has repeatedly
5 cross examined witnesses about their state of mind.
6

7 **D. Audio excerpt of James Shore**

8 Attached as Exhibit A to this Memorandum is a transcript of an excerpt of the Spiritual
9 Warrior 2009, Sunday, October 4 gathering. During his cross examination of witness Dennis
10 Mehravar, defense counsel cross examined him about the activity on Sunday when Defendant
11 instructed participants to write their intentions for the week. Defense counsel, reading from a
12 transcript of the audio of Sunday, October 4, 2009, read to Mr. Mehravar the intention he had
13 written. Mr. Mehravar agreed it was his intention and agreed he and other participants had shared
14 their intentions with Defendant at the microphone.
15

16 Exhibit A is a transcript of the intention written by victim James Shore and shared by Mr.
17 Shore with Defendant at the microphone. The exhibit with this audio has been marked for trial as
18 Exhibit 754. The State will lay foundation through upcoming witness Stephen Ray or other
19 witnesses for this exhibit. The exhibit is very relevant because it shows James Shore's state of
20 mind and explains his conduct inside Defendant's sweat lodge. It also demonstrates that
21 Defendant knew of James Shore's adoption of Defendant's teachings for the week; specifically to
22 "live impeccably," "to continue on the path to enlightenment without distraction," and to
23 "embrace everything both God and my higher self place in my path as enhancements on my
24 journey and necessary to speed me on my way."
25

26 Ultimately, what James Shore "embraced" as placed in his "path" was Defendant's

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1 challenge to surrender to the extreme heat in the sweat lodge to achieve the promised
2 enlightenment. This exhibit is clearly relevant as evidence of the conduct and state of mind of
3 James Shore inside Defendant's sweat lodge.

4 RESPECTFULLY submitted this 14th day of March, 2011.

6
7 By Sheila Sullivan
8 SHEILA SULLIVAN POLK
9 YAVAPAI COUNTY ATTORNEY

10 **COPIES** of the foregoing emailed this 14th day of March, 2011:

11 Hon. Warren Darrow
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13 Thomas Kelly
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17 By: Lenny Cramer
18

COPIES of the foregoing delivered this 14th day of March, 2011, to

Thomas Kelly
Via courthouse mailbox

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Los Angeles, CA 90071-1560

Via U.S. Mail
By: Lenny Cramer

JAMES SHORE: Thank you. I am samurai James Shore. My purpose as samurai is to lead, is to breathe honor and truth with every second of this life. I am committed to my family. They are the jewels of my life and I am committed to remembering my path of truth every moment. To live impeccably is to be in perfect harmony with creation. To be the best of – to live to the best of my abilities at all times. To be impeccable is to continue on the path to enlightenment without distraction, to embrace everything both God and my higher self place in my path as enhancements on my journey and necessary to speed me on my way. I give thanks for every moment for all the gifts of life and I am samurai. As a child of God, I claim my right to ascend to the throne of God and sit between the Mother and Father of Creation as a fully self aware and enlightened master. Hi-i-ah (phonetic).

ALL: Hi-i-ah. (phonetic).